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# UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT SECURITIES, LLC,

Defendant.

In re:

BERNARD L. MADOFF INVESTMENT SECURITIES LLC,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

TRUST FUND B U/W EDWARD F. SELIGMAN

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 10-04885 (SMB)

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F/B/O NANCY ATLAS and NANCY ATLAS, in her capacity as the Trustee and Beneficiary of the Trust Fund B U/W Edward F. Seligman F/B/O Nancy Atlas,

Defendants.

#### TRUSTEE'S REQUEST TO ENTER DEFAULT

To: CLERK OF THE COURT UNITED STATES BANKRUPTCY COURT

Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities, LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.*, and Bernard L. Madoff, by and through his counsel, Baker & Hostetler LLP, respectfully requests that the Clerk of the Court issue a Certificate of Default against defendant Trust Fund B U/W Edward F. Seligman F/B/O Nancy Atlas, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, made applicable to this Adversary Proceeding by Rule 7055 of the Federal Rules of Bankruptcy Procedure, for failure to plead or otherwise defend the above-captioned action as it fully appears from the Court file and from the attached Affidavit.

**WHEREFORE,** the Trustee respectfully requests that this Court grant the Trustee's Request for Entry of a Certificate of Default.

Dated: New York, New York July 7, 2014 Respectfully submitted,

### s/ Marc Hirschfield

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Defendant.

In re:

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Debtor.

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Plaintiff,

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F/B/O NANCY ATLAS and NANCY ATLAS, in her capacity as the Trustee and Beneficiary of the Trust Fund B U/W Edward F. Seligman F/B/O Nancy Atlas,

Defendants.

### **AFFIDAVIT SUPPORTING ENTRY OF DEFAULT**

STATE OF NEW YORK	)	
	)	ss:
COUNTY OF NEW YORK	)	

Robertson D. Beckerlegge, being duly sworn, hereby attests as follows:

- 1. I am a member of the Bar of this Court and a partner at the firm of Baker & Hostetler LLP, which is counsel for Irving H. Picard ("Trustee"), Trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, et seq. ("SIPA") and the estate of Bernard L. Madoff, individually.
- 2. On December 2, 2010, the Trustee commenced this adversary proceeding by filing a complaint (the "Complaint") against Trust Fund B U/W Edward Seligman F/B/O Nancy Atlas and Nancy Atlas ("Defendants"). (Dkt. No. 1.) The Complaint asserted claims pursuant to sections 78fff(b), 78FFF-1(a) and 78fff-2(c)(3) of SIPA, sections 105(a), 544, 548(a), 550(a), and 551 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, and other applicable law, seeking the avoidance and recovery of fraudulent transfers in connection with certain transfers of property by BLMIS to or for the benefit of Defendants. (*Id.*).
- 3. On March 18, 2011, the Clerk of this Court issued a summons upon Defendants. (Dkt. No. 3.)

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4. On March 18, 2011, the Trustee, in accordance with Bankruptcy Rule 7004(b) of the Federal Rules of Bankruptcy Procedure, timely served the Summons and Complaint upon Defendants. (*See* Dkt. No. 4.) An Affidavit of Service evidencing proper

and timely service was filed with the Court. (See Ex. A, Affidavit of Service; Dkt. No. 4.)

5. Pursuant to the Order (1) Establishing Litigation Case Management

Procedures For Avoidance Actions And (2) Amending The February 16, 2010 Protective

Order governing the litigation of certain avoidance actions, including this adversary

proceeding, the time by which Defendants may answer or otherwise move with respect to

the Complaint expired May 17, 2011. (See Dkt. No. 3.)

6. Despite being duly served with the Summons and Complaint, Defendants

did not file an answer, move, or otherwise respond to the Complaint on or before May 17,

2011.

7. Defendant Trust Fund B U/W Edward F. Seligman F/B/O Nancy Atlas is a

business entity and therefore is neither an infant nor incompetent.

8. Moreover, because the Defendant is a business entity, the protections

afforded under the Servicemember's Civil Relief Act of 2003 should not apply.

9. I declare under penalty of perjury that the foregoing is true and accurate to

the best of my knowledge, information and belief.

<u>/s/Robertson D. Beckerlegge</u>
Robertson D. Beckerlegge

Sworn to before me this 1<sup>st</sup> day of July 2014

/s/ Dawn Van Dyke

Notary Public

Dawn Van Dyke

Notary Public, No. 01VA6154528

Qualified in New York County

Commission Expires 10/23/2014

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